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## Between Military Efficiency and Democratic Legitimacy: Mapping Parliamentary War Powers in Contemporary Democracies, 1989–2004<sup>1</sup>

BY DIRK PETERS AND WOLFGANG WAGNER

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### ABSTRACT

Parliamentary approval can be of crucial importance to ensure the democratic legitimacy of military operations as it can establish public consent to the executive's use of force. But involving parliament in decisions to deploy military forces may have negative repercussions on the efficiency of operations, e.g. by slowing down decision-making. As the military activity of democracies has been on the rise since the end of the Cold War, democracies around the world have been increasingly pressed to deal with this trade-off between legitimacy and efficiency in sending troops abroad. This paper surveys the deployment provisions of 49 contemporary democracies to establish whether and how parliaments are actually involved in deployment decisions. It demonstrates that the rules for parliamentary participation mark a continuum that ranges from complete exclusion to a comprehensive veto position of parliament over all potential deployments. In between these two extremes, democracies have found a wide variety of solutions to cope with the legitimacy-efficiency problem. Despite the growing prevalence of military deployments, there is no discernible trend towards parliamentarisation, however. Rather the trend towards internationalisation of security policies contributed to a weakening of parliamentary powers in some countries.

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SINCE THE end of the Cold War, military deployments by liberal democracies have become more and more common. Until then, involvement in actual armed conflict had been limited to a rather small number of democracies, mainly the USA, Israel, India, the UK, France and Australia.<sup>2</sup> Most other democracies maintained large armies for a worst-case scenario of homeland defence that—fortunately—never materialised. If deployed at all, these armed forces contributed to peace-keeping operations that only allowed the use of force in exceptional cases of self-defence. It was only in the course of the 1990s that United Nations (UN)-mandated operations increasingly allowed for the use of force with the development of 'robust' peace-keeping, peace-enforcement operations and UN-mandated operations to combat terrorism or piracy. Democracies have been particularly frequent contributors to these missions.<sup>3</sup> In NATO's Kosovo campaign in 1999 and

the US-led war some democracies even engaged in military operations not explicitly authorised by the UN.

This new military activism of democracies has revived debates about the role of parliaments in decision-making on the use of force. Since the end of the Cold War, many democracies have reformed their deployment regimes and attempted to find an adequate place for parliaments in them. In doing so, they saw themselves faced with a formidable dilemma. On the one hand, parliamentary participation in decision-making may appear as a useful tool or even a crucial prerequisite to provide military deployments with much-needed legitimacy. On the other hand, however, parliamentary involvement may be held to endanger the efficiency of force deployments. Moreover, the emphasis which, in the past two decades, has been placed on 'rapid reaction' to international crises militates against the involvement of additional actors in the force deployment process. How did democracies deal with this dilemma?

This paper investigates in detail how democracies around the globe have attempted to resolve this trade-off between legitimacy and efficiency regarding parliamentary involvement in deployment decisions. Although deployment legislation and the role which is accorded to parliaments have received growing attention by legal as well as political science scholars the scope of past investigations has usually been confined to the transatlantic region.<sup>4</sup> Not surprisingly, most studies focused on the militarily most active democracies, especially on the USA whose war powers have, moreover, attracted a lot of commentary due to their contested nature;<sup>5</sup> and on the member states of the Western security institutions NATO, EU and WEU.<sup>6</sup>

In contrast, this paper looks at almost 50 democracies worldwide. Based on a new data set,<sup>7</sup> which covers the war powers of parliaments in 49 democracies since the end of the Cold War, we can paint a more comprehensive picture of the roles parliaments play in decision-making on the use of armed force and discuss how democracies attempt to fine-tune the balance between the conflicting requirements of military efficiency and democratic legitimacy. We begin our discussion by briefly reviewing the debate about the desirability of parliamentary involvement in deployment decisions. Based on our data set on parliamentary control of military missions, we then map the war powers in contemporary democracies and discuss main trends and patterns. It will become clear that the most influential oversight instrument, namely full-blown *ex ante* veto power across all military missions, is granted only to a minority of parliaments worldwide. Yet democracies have found many other ways to involve parliaments in decision-making about military deployments, making a multitude of distinctions between the types of operations over which parliaments have a say and the stages at which they become involved in the decision-making

process. An overall trend towards the parliamentarisation of war powers, which has been claimed to exist,<sup>8</sup> is not discernible, however.

### *The case for and against parliamentary war powers*

Critics of parliamentary war powers can refer to an impressive list of thinkers who argued against the involvement of parliament in decision-making over military missions. Machiavelli, John Locke, Montesquieu and Alexis de Tocqueville all argued that the executive should be able to decide autonomously over the deployment of armed forces.<sup>9</sup> Even though the nature of armed conflict and the international system more broadly underwent dramatic changes since the times of these thinkers, the basic arguments against parliamentary involvement remained, by and large, the same: first and most importantly, the involvement of parliament is seen to undermine the efficiency of military operations which requires 'secrecy, security and surprise'.<sup>10</sup> According to Rasler and Thompson, 'decentralising power in the face of threat would seem inefficient and highly dangerous, perhaps even inviting attack'.<sup>11</sup> Second, parliamentary involvement is regarded to blur the distinction between executive and legislative responsibilities. As a legislator, parliament may decide on rules governing the use of armed force but should refrain from deciding over individual missions. Moreover, parliament's ability to hold government accountable for its decisions does not square well with its claim for influencing these decisions in the first place. The only modern addition to these traditional arguments is the notion that parliamentary involvement makes joint military missions with other countries more difficult, complicated and, as a consequence, less efficient.

In contrast, proponents of parliamentary war powers emphasise that despite such concerns about efficiency, the use of force requires a special effort to ensure its legitimacy. Few decisions have a more severe impact on the lives of citizens than decisions on military missions, and therefore no meaningful notion of democracy could possibly exempt them from parliamentary control.<sup>12</sup> Countering critics' arguments about military efficiency, they argue that provisions can easily be made to allow for swift reaction to outside attack while putting participation in 'wars of choice' under tighter restraints.<sup>13</sup> Furthermore, proponents argue that the support of parliaments has a beneficial effect on military morale. General Sir Michael Rose testified to the House of Lords that '[t]here can be no more debilitating effect on the morale of members of the armed forces for them to know that their country does not support the mission [...]. A formal requirement for prior parliamentary authorisation for entering into conflict situations can therefore only be of benefit to members of the armed forces'.<sup>14</sup> Finally, proponents of parliamentary war powers argue that the quality of decisions improve when they are taken with the involvement of parliament (or the public more broadly) instead of small cabinet circles. Ever since Immanuel

Kant's *Perpetual Peace*, this line of reasoning has come with a pacifist flavour because if 'the consent of the citizens is required to decide whether or not war is to be declared, it is very natural that they will have great hesitation in embarking on so dangerous an enterprise'.<sup>15</sup> More recently, empirical studies have found evidence for various effects of democratic control of security policy: democracies have been found to be more likely to win the wars they fight because deliberation and accountability lead to a more careful selection of conflict involvements<sup>16</sup> and to inflict fewer casualties on their own as well as their opponent's civilian population.<sup>17</sup> In a similar vein, Dieterich, Hummel and Marschall found evidence that democracies with weak parliamentary control were more likely to participate in the Iraq War.<sup>18</sup> However, the Iraq War also demonstrates that a parliamentary vote does not automatically ensure democratic legitimacy. In the UK, for example, the Iraq War remained unpopular despite cross-party support for a government motion in favour of invasion on its eve.<sup>19</sup> The British example serves as a reminder that in parliamentary systems, MPs of the party (and occasionally: parties) in government risk the fall of government and, by extension, their own re-election, when refusing to support government policy.

Remarkably, proponents and critics of parliamentary control do not dispute that parliamentary involvement slows down decision-making over military missions and increases public ex ante scrutiny to the effect that, if conflicting, the interests of a reluctant public are more likely to trump security considerations. The main disagreement concerns the desirability of this effect with critics having more confidence in the executive's capacity to respond adequately to international pressures and requirements and proponents being more alarmed about possibilities of misjudgement and even abuse of executive freedom.

### *Mapping war powers in contemporary democracies*<sup>20</sup>

How do states deal with this trade-off between efficiency and legitimacy of military operations? Which rights do they grant to parliaments? Parliamentary war powers are, of course, a multidimensional concept encompassing budgetary powers, obligations of government to report to parliament or rights to visit troops during deployment.<sup>21</sup> We will focus in this paper on the arguably most effective tool parliaments can possess to control the executive's use of force. According to Heiner Hänggi, 'the strongest means of parliamentary oversight by far is [...] the constitutional or legal right to approve or reject such use of force'.<sup>22</sup> Even this right of approval may take a variety of forms, however, and may be differentiated, for example, according to the type of mission or the stage of the decision-making process at which parliaments become involved. We will begin our investigation by examining how wide spread the most extensive form of this kind of parliamentary involvement has become since the end of the Cold War: parliament's

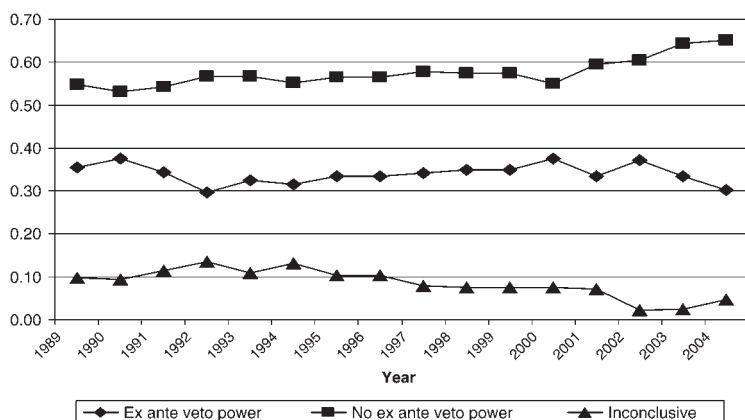
right to veto troop deployments before they are launched. On this basis we will then examine the main differentiations that have developed among parliaments beneath this general level.

Our analysis is based on a new data collection we created for this purpose, the ‘ParlCon’ data set. ParlCon assembles information about the parliamentary control of military missions in 49 democracies over the period 1989–2004. As levels of parliamentary control may change over time, the country-year is the unit of analysis in ParlCon. Included are countries that in a given year could be characterised as an uncontested democracy. Following common practice, we used the POLITY IV database to identify these established democracies. Accordingly, every country that has a POLITY score of 9 or 10 in a given year was included in ParlCon for that year.<sup>23</sup> We then excluded those countries that do not have military forces (namely Costa Rica, Mauritius, and Panama) as well as Taiwan because of its special status as an entity with very limited international recognition and its concomitant special role with regard to military missions. Finally, we limit our analysis to the period between the end of the Cold War, 1989, and 2004. All in all, we have gathered data on 49 countries over varying periods of time, yielding a total of 616 country-years.<sup>24</sup> A complete list of countries and their basic parliamentary war powers is reproduced in the appendix.

Looking first at the share of countries whose parliament holds ex ante veto power we find that a considerable minority of parliaments enjoy such a right. As Figure 1 demonstrates, such veto power can be found in about a third of democracies.<sup>25</sup>

All in all, 21 democracies had institutionalised parliamentary ex ante veto right for at least some period of time, although four of them

Figure 1. Share of democracies with and without parliamentary ex ante veto power.



abolished it during the period we studied. It is important to note that this group of states has a highly varied composition. It includes NATO states (e.g. Turkey or Denmark) as well as non-aligned countries (e.g. Ireland or Austria), parliamentary systems (e.g. the four countries just mentioned) and presidential ones (e.g. Bolivia, Chile, Uruguay or Venezuela). The majority of countries, however, do not give parliament a veto power over military missions. This latter group likewise includes parliamentary systems (e.g. Canada, Thailand or, until 1996, Israel) and presidential ones (e.g. Colombia, Ecuador, Madagascar or the USA) as well as alliance members (e.g. Canada or Belgium) and non-aligned states (e.g. India or Jamaica).

Although neither the presidentialism/parliamentarism distinction nor alliance membership has any discernible impact on the presence or absence of parliamentary war powers, it is remarkable that almost all members of the Commonwealth, whose constitution has been heavily influenced by the British role model with its doctrine of the royal prerogative, assign war powers exclusively to the executive. Thus, Canada, India, Australia, New Zealand, Jamaica, Botswana, South Africa, Trinidad and Tobago and of course the UK itself all lack *ex ante* veto power. In contrast, Papua New Guinea and, since 2003, Cyprus, are the only Commonwealth members whose parliaments may veto deployment decisions.

Figure 1 also suggests that the basic war power provisions have been highly stable in most democracies. A change through which parliament gained or lost its veto right took place in only five states during this period, whereas no change occurred in 37, i.e. in almost 80% of the states we look at. In the remaining states, rules for the deployment of forces were created or clarified for the first time during the period we cover and remained stable from there on.<sup>26</sup> New rules were drawn up especially in newly democratising states, where there were strong incentives to give parliament a prominent role in deployment decisions during the process of democratisation. Because concerns about a possible misuse of the military to oppress democratising forces both within and outside the country were widespread in these countries, constitutional provisions frequently introduced tight controls on the government. Thus, soon after the end of authoritarian rule, parliamentary veto power was introduced in the Czech Republic, the Slovak Republic, Lithuania, Bulgaria and Romania. In Hungary where memories of being both a victim of and a participant in military interventions to restore the Communist Party's control of power were still alive, the constitution even provided for a two-thirds majority of all MPs (whether present or not) before troops could be deployed. Remarkably, this trend towards parliamentary war powers was largely absent in new democracies outside Europe such as Thailand or Peru. Apparently, in these countries, concerns about a military coup against the legitimate



democratic government were more important than concerns about the misuse of the military *by* that government.

Where democratic constitutions were already in place and included provisions on military missions they were sometimes limited to the case of declaring war. With a view to contemporary deployments, they were therefore of limited use since war has long ceased to be legitimate under international law. In fact, the UN Charter has delegitimised any use of force other than either in self-defence or on the basis of a mandate of the Security Council. Originating in earlier periods of a country's constitutional history and having survived dramatic changes in international law, such provisions called for further clarification for missions other than war. Nonetheless, a considerable number of countries refrained from any revision of their constitutional provisions to the effect that parliament effectively lost all its war powers as the only use of force it may authorise was outlawed under international law. This holds true for Australia, Colombia, Mongolia, Peru, Poland, Portugal, Slovenia, Spain<sup>27</sup> and Thailand. Other democracies filled this lacuna by either amending or re-interpreting their constitutions. With the exception of the post-socialist countries discussed above, few countries opted for constitutional amendments, the Netherlands being a rare exception.<sup>28</sup> In other countries, constitutional courts were instrumental in (re-)interpreting constitutional provisions. For example, the German Federal Constitutional Court ruled in 1994 that the constitutional provision according to which military force may only be used in self-defence or in the framework of a collective security system, allowed out of area missions in the framework of the UN or NATO. The court also asked parliament to draft a deployment law which entered into force in 2004.

We see much more reform activity, however, below the level of constitutional revision. In adjusting their deployment provisions to changes in the international use of force, most countries opted for secondary legislation, either by way of specific deployment laws or as part of more comprehensive military laws. Secondary legislation allowed for a higher degree of differentiation between various types of military missions and for special regulations in case of emergency and consequently for much more fine-grained parliamentary powers. Thus, many democracies have found a more subtle balance between military and democratic requirements than the dichotomous choice between the presence or absence of *ex ante* veto power suggests. Indeed, the complete exclusion of parliament from decision-making over military deployments and the full-blown parliamentary veto over all military operations are but the two extreme ends of a continuum which includes a wealth of provisions designed to fine tune the balance between military efficiency and democratic legitimacy. On the one hand, some countries whose parliament generally has an *ex ante* veto power have exempted certain types of missions from this general rule to allow different mixtures of



military efficiency and democratic legitimacy for different types of military missions. On the other hand, many countries whose parliament has no *ex ante* veto power nevertheless have granted parliament various degrees of involvement in decision-making over military missions such as the right to be consulted or the power of *ex post* approval. In a similar vein, some democracies have designed provisions to allow a selected group of deputies—but not parliament as a whole—to participate in decision-making on the use of force.

Many democracies require *ex ante* parliamentary approval for some kinds of military missions but allow government to decide autonomously on others. Although several criteria for differentiation are discernible, the underlying idea remains the same, namely that different missions require different balances between the requirements of military efficiency and democratic control. This is most obvious with regard to self-defence in case of an external attack which does not require *ex ante* parliamentary approval in any state. Further differentiations are frequently made on the basis of two criteria: first, several democracies reserve *ex ante* approval to severe forms of military force while exempting less severe ones; second, various democracies require *ex ante* approval in general but exempt military missions which are mandated by international organisations.

Exempting traditional peacekeeping operations (as in Sweden), deployments of less than 12 soldiers (as in Ireland) or less than a hundred soldiers and a duration of less than three weeks (as in Switzerland) are typical examples of granting government exclusive decision-making power in cases which are considered of minor importance. In such cases, which are unlikely to escalate and put the lives of servicemen at risk, a lower standard of democratic legitimacy is considered sufficient. In a similar vein, the German deployment law provides for a simplified procedure for minor missions. Some countries also provide for emergency procedures through which they enable government to deploy troops rapidly without consulting parliament in cases of particular urgency. Usually, parliamentary approval has then to be given *ex post* or else the troops have to be called back within a certain time frame. Such provisions exist, e.g. in Austria (two weeks timeframe), and for certain operations in Japan (20 days), in the Czech Republic and Slovakia (60 days, respectively).

From a legal perspective, a mandate from the UN Security Council under chapter VII of the UN Charter plays a pivotal role in this context because any other use of force (with the exception of self-defence) is illegitimate under international law. Remarkably, however, a UN Security Council mandate does not render *ex ante* parliamentary approval obsolete in any democracy we studied. Rather, in Ireland such a mandate has been required in addition to parliamentary approval. In the Irish 'triple-lock' system, a UN mandate is the first requirement for

any military operation (government's and parliament's consent providing the keys to the second and third lock).

Although without the UN's power to legitimise the use of force under international law, regional organisations have assumed a more prominent place in democracies' deployment legislation, at least in Europe.<sup>29</sup> In Austria, for example, troops may only be deployed on request of the UN, the EU or the OSCE. The Finnish armed forces could only participate in traditional UN peacekeeping operations before this was more and more extended in the 1990s and 2000s to include OSCE-mandated action, UN peace support operations in a wider sense and, today, basically any military operation mandated by an international organisation. Similarly, the Canadian National Defence Act, stipulates that Canadian forces may be activated for non-defence purposes only to participate in missions under the UN Charter or within NATO or similar organisations.

Whereas the countries just mentioned consider a regional organisation's mandate as an additional requirement to ex ante parliamentary approval, other countries have regarded it as a substitute. Surprisingly enough, this concerns especially newly democratised states which had taken so much care to ensure tight parliamentary control over the executive's use of military force immediately after their transition to democracy. In the context of their accessions to NATO and the EU, many Central and Eastern European states chose to relax these restrictions and to abolish the parliamentary proviso for NATO and EU operations. This move usually was justified with requirements of military efficiency (see also below).<sup>30</sup> In Hungary, for example, parliament enjoys a general veto right over military deployments. Yet parliamentary approval is not needed if troops are deployed to NATO or EU missions. Similar exceptions exist in Bulgaria, the Czech Republic, Romania and Slovakia. These are exceptions of major importance, as they exempt probably the largest proportion of operations in which these countries participate from parliamentary veto and hence significantly devalue the institution of parliamentary ex ante control.<sup>31</sup>

Variation also exists among those states which do not provide for any form of parliamentary ex ante veto. Not all of these states completely exclude parliament from the decision-making process. To begin with, the executive of course is free to turn to parliament and ask for approval for any planned mission. For example, the government of Tony Blair decided to have the House of Commons vote on a government motion seeking authority for military action and the use of 'all necessary means' to disarm Iraq. As the example illustrates, such votes are frequently asked for by governments in order to increase the legitimacy of military operations and to ensure that the efficiency of an operation cannot be undermined by parliamentary opposition to the deployment. This may, in certain cases, give parliamentarians some influence on the operation. But when the involvement of parliament is

exclusively at the government's discretion, there is a very fine line between meaningful consultation with parliament and the goal of simply having executive decisions rubberstamped. On the other hand, the case of Norway illustrates that consultation may become such a common practice that it develops into a *de facto* obligation that is acknowledged by both government and parliament even in the absence of any legal obligation. A similar development took place in the Netherlands where the tacit obligation to consult Parliament was eventually formalised in a new constitutional article in 2000.

Some countries likewise formalise the involvement of parliament without giving it actual veto power. This can be achieved by requiring government to consult with parliament over military deployments and such consultation procedures may take on a wide variety of forms. In some countries, government must inform parliament about deployment decisions but only after the deployment has been made. Having to notify parliament immediately (Poland), without undue delay (Slovakia), if it is assembled (Ecuador) or within five or seven days (Romania, Canada and South Africa), ensures that the armed forces cannot be sent abroad secretly. Yet it will not do much to increase parliamentary leverage over deployment decisions.

The US War Powers Resolution has set yet another standard for balancing military and democratic requirements that has been broadly discussed because its binding character has been contested and because of the frequency of US military interventions. The War Powers Resolution that Congress agreed in 1973 not only obliged government to consult Congress before any deployment but has furthermore given Congress a right to approve any mission *ex post*. According to section 5(b) of the War Powers Resolution, the President shall terminate any deployment within 60 days 'unless the Congress (1) has declared war or has enacted a specific authorisation for such use of US Armed Forces, (2) has extended by law such 60-day period or (3) is physically unable to meet as a result of an armed attack upon the United States'.<sup>32</sup> This amounts to a right to call back troops that have already been deployed. Congress's right of *ex post* approval has inspired the reform of deployment legislation in the Czech Republic and Slovakia. Both countries now allow government to decide autonomously about the deployment of troops for 60 days, although this provision only applies to the fulfilment of international treaty obligations.<sup>33</sup> However, given that the public and its representatives in parliament tend to rally behind the executive once hostilities started, the right to call back troops can only be exercised at considerable political costs, rendering *ex post* approval far less effective than an *ex ante* veto power.

Our map of parliamentary war powers becomes even more complex if we consider that it is not always parliament as a whole, i.e. the plenary, that is granted a say in decision-making over the use of force. In Austria, for example, it is parliament's 'main committee' that

discusses and decides on military deployments. In several other states, only individual parliamentarians are involved in decision-making before the deployment decision is made. In Portugal, for example, members of parliament are represented in the Superior Council of National Defence. Although the Council does not have decision-making competences on troop deployments and is, moreover, dominated by the executive it may nonetheless provide parliamentarians with a formal channel to influence government decisions at an early stage. Similarly, in Greece, two members of all parties represented in parliament sit on the National Council on Foreign Policy (NCFP) that was established in 2003 to improve democratic oversight by bringing together members of the executive and the legislative. Like the Portuguese Superior Council of National Defence, the NCFP is a purely advisory body with no formal decision-making power. In Mongolia the speaker of parliament is member of the National Security Council. The National Security Council, in turn, makes the deployment decision unanimously so that some representation of parliament in decision-making is guaranteed without giving parliament as such a full-blown veto opportunity.

Looking at all these variations beneath the level of broad classifications, it is obvious that parliamentary control rights can be conceived as a continuum, delimited by two extreme points. At one extreme, parliaments have no say whatsoever in any deployment decision. At the other side of the spectrum parliamentary consent is required for all operations. In between these two extremes, there is a dazzling range of options giving parliament a more or less tightly institutionalised consultative role or a say in an increasingly large set of military operations.

### *Towards a parliamentarisation of war powers?*

With a view to the growing number of UN military missions, Lori Damrosch argued that there was a discernible ‘trend since the Second World War of legislative involvement in decisions to authorise participation’.<sup>34</sup> Whereas our data do not allow mapping developments in war powers over the entire post-WW II period, our examination of the period since the end of the Cold War casts some doubts on this thesis. First, as discussed above, the share of democracies with parliamentary veto powers has not been rising over the period 1989–2004—even though changes in this figure result first and foremost from countries being added and taken out of our sample due to changing scores on POLITY’s democraticness scale.

Second, and more importantly, a closer look at cases of rule modification reveals that parliaments usually lose powers when existing provisions are substantially modified. Veto powers that had been in place were abolished in Hungary, the Czech Republic, Bulgaria and the Slovak Republic. On the other hand, a parliamentary veto right was introduced only in Cyprus. Thus, at least since the end of the Cold

War, any trend towards a parliamentarisation of war powers has come to a halt or has even been reversed.<sup>35</sup>

On closer inspection, the instances of rule change display another interesting characteristic. Throughout, the cases in which veto powers were abolished concern Central and Eastern European transformation states that prepared for accession to NATO (and the EU), namely Bulgaria, the Czech Republic, Hungary and Slovakia. Especially NATO accession apparently amplified the trade-off between creating legitimacy through procedures of *ex ante* parliamentary control and gaining efficiency through lean, executive-centred decision-making. From a NATO perspective, having some member state governments tied to domestic parliamentary veto power must seem highly unattractive. Arriving at unanimous decisions in the North Atlantic Council is difficult already, especially after NATO enlargement. The prospect of having domestic parliaments veto a deployment even after a decision had been arrived at in the North Atlantic Council therefore created some unease on the NATO level. NATO's efforts to limit national parliaments' interference in decision-making focused on the states in the accession process and to which conditionality therefore applied. In Hungary, then NATO Secretary General Lord Robertson went as far as publicly naming Hungary as a member state whose constitution would not allow for deployments in NATO missions.<sup>36</sup> In this context, some governments of Central and Eastern European states successfully initiated changes in their domestic deployment rules. The result was that in these states NATO missions or other missions carried out within an international framework were exempted from parliamentary veto. As most military operations that are carried out nowadays are multilateral operations within such a framework, this implied in practice the abolishing of the parliamentary veto. The Bulgarian President Parvanov, for example, was ready to propose a modification of the constitutional text so as to make article 84 (11) applicable only to non-NATO operations, e.g. by adding the words 'except in cases where the Republic of Bulgaria is a party to international treaties and fulfils the obligation specified in them.'<sup>37</sup> In 2003, the Constitutional Court decided that no changes would be necessary and that article 84 (11) of the constitution would not apply to obligations by an international treaty that has been ratified, promulgated and become effective in the Republic of Bulgaria. Consequently, there would be no need for having the National Assembly's permission for deployments if they were derived from international treaty obligations.

The trend towards a de-parliamentarisation of war powers has been most pronounced in Central and Eastern European democracies where the prospect of NATO accession served as an important incentive. Yet similar debates can be found in the older NATO members as well, even though they did not result in changes in deployment provisions. For example, Germany's Christian Democrats argued that a parliamentary

veto power did not square well with the requirements of integrated multinational rapid response forces such as NATO's Response Force and the European Union's Battlegroups. MP Schockenhoff argued that individual parts of an integrated military unit cannot be held under a parliamentary proviso.<sup>38</sup> In a similar vein, Home Secretary Schäuble and Parliamentary Secretary of State Christian Schmidt suggested that parliament should vote on a motion at the beginning of each parliamentary term that would delegate decision-making on the deployment of multinational integrated units to the government.<sup>39</sup> Although the proposals eventually failed to receive the necessary two-thirds majority, they illustrate that democracies with comprehensive parliamentary war powers have come under pressure as a result of the internationalisation of security politics.

It is interesting to note that the trend towards de-parliamentarisation is unrelated to the main political event in the period under consideration, namely the 2001 terrorist attacks on New York and Washington. Although '9/11' had a tremendous impact on many aspects of security politics, it left democracies' deployment regimes by and large intact. Where changes in deployment rules were discussed or implemented after 2001, the challenge of international terrorism did not provide a key rationale. Rather efficiency requirements of multilateral operations in general served as the crucial point of reference. The only exception we are aware of is Japan whose Parliament passed an 'Anti-Terrorism Special Measures Law' in October 2001 that allows for sending armed forces without *ex ante* parliamentary approval if they support the USA and its allies in the combat of terrorism. Instead, parliamentary approval is only required within three weeks after the deployment began. On the basis of this law, Japan has sent maritime units to the Indian Ocean as rear area support to the US troops in Afghanistan and some 550 noncombat troops to Iraq. However, the 'Anti-Terrorism Special Measures Law' explicitly provides these military measures 'must not constitute the threat or use of force'.<sup>40</sup>

### *Conclusion*

As the plethora of amendments and revisions of deployment provisions since the end of the Cold War demonstrates, war powers have remained a particularly contested issue in legislative-executive relations, both in presidential and parliamentary systems and in aligned as well as non-aligned countries. A trend towards parliamentarisation, as diagnosed by Lori Damrosch, has not been confirmed by our data. If anything, there has been a trend towards ever more differentiation, particularly as to various types of military missions and the institutional settings in which they take place. Members of NATO in particular have found themselves under pressure to adapt to new forms of multi-level decision-making over military deployments that result from the establishment of integrated multinational military units. Because the



multinational integration of armed forces is seen to contribute to a more efficient spending of scarce resources and to trust and solidarity among allies, tensions between parliamentary control and the efficient deployability of multinational units are likely to remain challenges for the time being.

The trend towards differentiation of war powers is also likely to endure because military missions continue to become ever more complex. Three developments are worth highlighting in particular. First, especially within the European Union's Security and Defence Policy, an increasing number of peace support missions rely on police and gendarmerie forces, rather than the military. However, deployment legislation in many countries only covers military missions and remains silent on deployments of police or gendarmerie forces. As a consequence, parliaments have been involved in unsystematic ways and on an ad hoc basis.<sup>41</sup> Second, some democracies have emulated the big military powers in setting up special forces for covert operations. In Germany, for example, a 'Kommando Spezialkräfte' has been established in the second half of the 1990s. Although the German Bundestag has far-reaching powers to control military missions in general, the deployments of the 'Kommando Spezialkräfte' have been shielded from parliamentary scrutiny which in turn has given rise to calls for clarification in an amendment to the deployment law.<sup>42</sup> Third, and finally, Private Military Companies (PMCs) have become an indispensable part of many military missions, most prominently in Iraq where PMCs have contributed more forces than any other member of the US-led coalition, being almost equal to all the states excluding the US combined.<sup>43</sup> Monitoring problems characteristic of outsourcing in general are exacerbated in military missions taking place in far away conflict zones. Likewise, the difficulties that governments experienced in controlling the activities of PMCs dwarf against those of parliaments that find themselves at the end of a chain of delegation.<sup>44</sup> As the three developments outlined above are all likely to continue, democracies either risk having parliaments increasingly sidelined or have to pass further amendments in their deployment legislation. As a result, parliamentary war powers are likely to become even more complex in the future.

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*Appendix: Presence/absence of ex ante parliamentary veto power over military missions, 1989–2004*

Country	Country-years	Presence/absence of ex ante parliamentary veto power
Australia	1989–2004	No prior parliamentary approval required
Austria	1989–2004	Prior parliamentary approval required
Belgium	1989–2004	No prior parliamentary approval required
Bolivia	1989–2002	Prior parliamentary approval required
Botswana	1997–2004	No prior parliamentary approval required
Bulgaria	2001–2004	Prior parliamentary approval required (2001–2002) No prior parliamentary approval required (2003–2004)
Canada	1989–2004	No prior parliamentary approval required
Chile	2000–2004	Prior parliamentary approval required (2000–2003) Inconclusive (2004)
Colombia	1991–1994	No prior parliamentary approval required
Cyprus	1989–2004	No prior parliamentary approval required (1989–2003) Prior parliamentary approval required (2004)
Czech Republic	1993–2004	Prior parliamentary approval required (1993–2000) No prior parliamentary approval required (2001–2004)
Denmark	1989–2004	Prior parliamentary approval required
Ecuador	1989–1996, 1998–1999	No prior parliamentary approval required
Finland	1989–2004	Prior parliamentary approval required
France	1989–2004	No prior parliamentary approval required
Germany	1989–2004	Inconclusive (1989–1994) Prior parliamentary approval required (1995–2004)
Greece	1989–2004	No prior parliamentary approval required
Hungary	1990–2004	Prior parliamentary approval required (1990–2003) No prior parliamentary approval required (2004)
India	1995–2004	No prior parliamentary approval required
Ireland	1989–2004	Prior parliamentary approval required
Israel	1989–2004	No prior parliamentary approval required
Italy	1989–2004	Inconclusive
Jamaica	1989–2004	No prior parliamentary approval required
Japan	1989–2004	Prior parliamentary approval required
Lithuania	1991–2004	Inconclusive (1991–1992) Prior parliamentary approval required (1993–2004)
Macedonia	2002–2004	Prior parliamentary approval required
Madagascar	1992–1996	No prior parliamentary approval required
Mongolia	1992–2004	Inconclusive (1992–2001) No prior parliamentary approval required (2002–2004)
Netherlands	1989–2004	No prior parliamentary approval required
New Zealand	1989–2004	No prior parliamentary approval required
Norway	1989–2004	No prior parliamentary approval required
Papua New Guinea	1989–2004	Prior parliamentary approval required
Peru	2001–2004	No prior parliamentary approval required
Poland	1995–2004	No prior parliamentary approval required
Portugal	1989–2004	No prior parliamentary approval required
Romania	2004	No prior parliamentary approval required
Slovakia	1998–2004	Prior parliamentary approval required (1998–2000) No prior parliamentary approval required (2001–2004)

*Continued*

## Continued

Country	Country-years	Presence/absence of ex ante parliamentary veto power
Slovenia	1991–2004	No prior parliamentary approval required
South Africa	1994–2004	Inconclusive (1994–1996) No prior parliamentary approval required (1997–2004)
Spain	1989–2004	No prior parliamentary approval required
Sweden	1989–2004	Prior parliamentary approval required
Switzerland	1989–2004	Inconclusive (1989–2001) Prior parliamentary approval required (2002–2004)
Thailand	1992–2004	No prior parliamentary approval required
Trinidad	1989–2004	No prior parliamentary approval required
Turkey	1989–1992	Prior parliamentary approval required
UK	1989–2004	No prior parliamentary approval required
USA	1989–2004	No prior parliamentary approval required
Uruguay	1989–2004	Prior parliamentary approval required
Venezuela	1989–1991	Prior parliamentary approval required

- 1 This paper emanates from the project 'The parliamentary control of military missions in Western democracies' that has obtained funding from the Deutsche Stiftung Friedensforschung. We gratefully acknowledge this support. Furthermore, we would like to thank Nigel White and Brendan Donnelly for their helpful comments and suggestions as well as Sandra Dieterich, Hartwig Hummel and Stefan Marschall for a stimulating exchange on the topic.
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- 5 Consecutive Presidents have denied that Congress had any competence to adopt such a resolution, and the US Supreme Court has shied away from adjudicating this dispute. On the US war powers see, among many others, H. Koh, *The National Security Constitution*, Yale University Press, 1990; L. Fisher, *Presidential War Powers*, University Press of Kansas, 1995.
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- 19 We owe this point to one of the reviewers. For a discussion of the House of Commons and the Iraq War cf. N. White, *Democracy Goes to War. British Military Deployments under International Law*, Oxford University Press, 2009, 238–68.
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- 23 The POLITY IV dataset is widely employed in International Relations and Comparative Politics research to measure the 'democraticness' of a country. It includes an 11-point democracy scale (0–10) and an 11-point autocracy scale (0–10). A country's regime type ('combined POLITY score') is then measured by subtracting its autocracy score from its democracy score yielding a 21-point scale (–10 to +10). +9 still is a value that is assigned only to countries whose democratic character is not in doubt. The POLITY dataset does not contain information on states with a population of less than 500,000. Consequently, very small countries are excluded from ParlCon by default. The POLITY project was founded by Ted Gurr in the 1970s. POLITY IV is located at the Center for Systemic Peace and George Mason University and directed by Monty G. Marshall. Our selection of cases is based on the 2004 version of POLITY IV that was the most recent one available at the start of our project. Subsequent updates have not been taken into account. The POLITY IV data and a codebook can be found at <http://www.systemicpeace.org/inscr/inscr.htm> (last accessed July 2010).
- 24 For a comprehensive presentation of the data set including all country profiles, see W. Wagner, D. Peters and C. Glahn 2010: Parliamentary War Powers around the World, 1989–2004. A New Dataset, Centre for the Democratic Control of Armed Forces (Occasional Paper 22), forthcoming.
- 25 Depending on the year under investigation (and, as a consequence, on the overall number of democracies included in our sample for the respective year), figures range from 30% (in 1992) to 38% (in 1990 and 2000).
- 26 The only exception is Chile, where formerly uncontested deployment rules were violated in 2004.
- 27 Spain introduced a deployment law in 2005, i.e. after the period under study here.
- 28 In 2000, a new article was introduced to the Dutch constitution obliging government to inform parliament in advance of any military mission. The new article codified a practice that had been established in the late 1980s.

- 29 Although attempts have been made to elevate regional organisations to the level of the UN with the power to legitimise military missions under international law, the majority opinion still reserves this privilege to the UN (see, among others C. Gray, *International Law and the Use of Force*, third edn., Oxford University Press, 2008). Remarkably, non-European countries have refrained from granting regional organisations such as the Organisation of American States a similar status in their deployment laws.
- 30 Remarkably, arguments referring to the moral authority of an organisation with exclusive democratic membership have been used to justify the use of force but hardly to justify the exemption from ex ante parliamentary control.
- 31 This is why the table in the appendix lists them as countries in which no prior parliamentary approval is required.
- 32 P.L. 93–148.
- 33 The French constitutional reform of 2008 also introduced a provision that requires parliamentary approval after 30 days into a deployment but this reform lies outside the scope of our data set which ends 2004.
- 34 L. Damrosh, 'The interface of national constitutional systems with international law and institutions on using military forces: changing trends in executive and legislative powers', in C. Ku and H. Jacobsen (eds), *Democratic Accountability and the Use of Force in International Law*, Cambridge University Press, 2002, p. 52.
- 35 Because our data set ends in 2004, the new Spanish deployment legislation that gives the Cortes a veto power over military deployments remains outside the scope of our analysis.
- 36 P. Dunay, 'Hungary', in H. J. Giessmann (ed.), *Security Handbook 2004*, Nomos, 2004, pp. 158–9.
- 37 See Speech of President Parvanov (in Bulgarian). 20.12.08. [www.president.bg/zakonod.php?id=572&st=0](http://www.president.bg/zakonod.php?id=572&st=0); translation by Filip Gelev.
- 38 *Frankfurter Allgemeine Zeitung*, 13.12.06.
- 39 See 'Staatssekretär fordert frühes Votum zum Einsatz', *Frankfurter Rundschau*, 14.12.06; 'Bundeswehreinsatz soll Parlamentssache bleiben', *Frankfurter Rundschau*, 11.12.06. See also 'Unser Hauptinteresse ist Europa', Interview mit dem CSU-Außenpolitiker Silberhorn, *Frankfurter Allgemeine Zeitung*, 29.01.07.
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- 44 D. Avant, 'Private Security', in P. Williams (ed.), *Security Studies*, Routledge, 2008, p. 449.